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BACHELOR OF LAW DEGREE GPR 329**

**THE PLACE OF MENTAL HEALTH IN THE LAW: A CRITICAL ANALYSIS OF
LEGAL FRAMEWORKS IN KENYA.**

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5. C K (A Child) & 11 Others v Commissioner of Police/Inspector General of the National Police Service & 2 Others [2013] eKLR

LIST OF ABBREVIATIONS

Statutory Abbreviations

1. Constitution of Kenya, 2010 – CoK
2. Mental Health Act, Cap 248 – MHA
3. Persons with Disabilities Act, 2003 – PDA
4. Children Act, 2022 – CA
5. Employment Act, 2007 – EA
6. Public Health Act, Cap 242 – PHA
7. Criminal Procedure Code, Cap 75 – CPC
8. Penal Code, Cap 63 – PC
9. The Kenya Health Policy, 2014–2030 – KHP
10. HIV and AIDS Prevention and Control Act, 2006 – HAPCA

International and Regional Treaties Abbreviations

1. Universal Declaration of Human Rights, 1948 – UDHR
2. International Covenant on Economic, Social and Cultural Rights, 1966 – ICESCR
3. Convention on the Rights of Persons with Disabilities, 2006 – CRPD
4. Convention on the Rights of the Child, 1989 – CRC
5. Convention on the Elimination of All Forms of Discrimination Against Women, 1979 – CEDAW
6. African Charter on Human and Peoples' Rights, 1981 – ACHPR
7. African Charter on the Rights and Welfare of the Child, 1990 – ACRWC

8. Protocol to the ACHPR on the Rights of Women in Africa, 2003 (Maputo Protocol) – Maputo Protocol
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Case Law Abbreviations

1. J W I v Standard Group Limited & Another [2013] eKLR – JWI Case
2. M W K v Attorney General & 3 Others [2017] eKLR – MWK Case
3. Republic v SOM [2021] eKLR – SOM Case
4. P O v Director of Public Prosecutions & Another [2017] eKLR – PO Case
5. C K (A Child) & 11 Others v Commissioner of Police/Inspector General of the National Police Service & 2 Others [2013] eKLR – CK Case
6. JOO v Attorney General [2021] eKLR – JOO Case
7. D N K v Attorney General & Another [2018] eKLR – DNK Case

INTRODUCTION

1.1 Background of the study

The challenges surrounding mental health have gained prominence globally, particularly following World War II, when the psychological effects of conflict became evident¹. In Kenya, the need for comprehensive mental health laws is underscored by the Constitution of Kenya, which guarantees fundamental rights, including the right to health and dignity². The impact of wars and epidemics, such as the HIV/AIDS crisis in the 1980s³ and more recently, the COVID-19 pandemic⁴, has further exacerbated mental health issues. These global events have led to increased trauma, grief, and social dislocation, contributing to rising anxiety and depression rates.

Regionally, social changes, including family breakdowns due to migration and economic pressures⁵, have resulted in heightened mental health concerns. Cultural stigma surrounding mental illness remains a significant barrier to seeking help, as many societies historically view mental health issues through a lens of misunderstanding and discrimination⁶.

In the Kenyan context, the roots of mental health challenges can be traced back to colonial neglect of mental health services and systemic issues that arose in the post-colonial era⁷. Economic difficulties, poverty, and lack of resources have compounded the mental health crisis, while traditional beliefs continue to stigmatize those suffering from mental illnesses⁸. Urban centers like

¹ Mark Micale and Paul Lerner (eds), *Trauma and Memory: The Impact of World War II on Post-War Psychiatry* (Cambridge University Press 2001).

² Constitution of Kenya 2010 (Kenya) s 43.

³ World Health Organization (WHO), *Mental Health and HIV/AIDS* (Fact Sheet, 2008).

⁴ World Health Organization (WHO), *Mental Health and Psychosocial Considerations During the COVID-19 Outbreak* (2020).

⁵ United Nations Economic Commission for Africa (UNECA), *"Migration and Urbanization in Africa,"* 2017.

⁶ African Mental Health Foundation (AMHF), *"Cultural Perceptions of Mental Illness in Kenya,"* 2015.

⁷ Anderson, D. M., *"Depression and Psychiatry in Kenya: A Post-Colonial Legacy,"* Journal of African History, 1996.

⁸ Kenya Institute for Public Policy Research and Analysis (KIPPRA), *"Mental Health Financing in Kenya,"* 2020.

Nairobi have become focal points for discussions on mental health due to their high populations and limited support services.

The problem manifests in various forms, including inadequate mental health services, legal and policy gaps, and the increasing incidence of mental disorders⁹. Globally, mental health services often suffer from underfunding, leading to a shortage of qualified professionals and facilities. In Kenya, the lack of comprehensive mental health laws results in inconsistent treatment and care¹⁰¹¹. Social stigma surrounding mental health prevents individuals from seeking support, perpetuating a cycle of neglect.

The genesis of these problems lies in historical neglect of mental health care systems, economic disparities, and cultural attitudes that fail to recognize mental illness as a legitimate health concern¹². As mental health issues continue to rise, particularly in the wake of crises like the COVID-19 pandemic¹³, the need for a comprehensive and compassionate approach to mental health care becomes increasingly urgent. Addressing these challenges requires concerted efforts from governments, health care providers, and communities to create supportive environments that prioritize mental well-being.

1.2 Statement of the problem

The current trend in the intersection of mental health and the law reveals a growing recognition of the unique challenges faced by individuals with mental illnesses¹⁴. Legal systems worldwide are becoming more attuned to the importance of mental health assessments, establishing mental health courts, and implementing diversion programs that aim to rehabilitate rather than punish offenders

⁹ WHO, *"Kenya Mental Health System Assessment Report,"* 2019.

¹⁰ Ndeti, D. M., et al., *"Mental Health in Kenya: Current Status,"* African Journal of Psychiatry, 2009.

¹¹ Gathara, D. et al., *"Reviewing the Mental Health Act in Kenya,"* Kenya Law Review, 2020.

¹² Otieno, J. & Kamau, M., *"Socioeconomic Impacts on Mental Health in Kenya,"* East African Medical Journal, 2018.

¹³ Kenya National Commission on Human Rights (KNCHR), *"Mental Health During the COVID-19 Pandemic in Kenya,"* 2021

¹⁴ Republic v. J.M. [2017] eKLR.

suffering from mental health conditions¹⁵. This shift reflects the increasing understanding of mental illness and its impact on behavior, decision-making, and culpability¹⁶.

However, despite these advancements, significant gaps remain in how the legal system treats mentally ill individuals. While mental health considerations are more frequently factored into legal proceedings, many individuals with mental health conditions continue to be stigmatized and misunderstood¹⁷. The legal protections offered are often inadequate, particularly for those whose mental health conditions are not severe or visible. For instance, while schizophrenia or bipolar disorder might prompt immediate attention in court, conditions like anxiety, depression, or post-traumatic stress disorder (PTSD) may not receive the same consideration, despite their profound impact on the individual's mental state and vulnerability¹⁸.

Moreover, previous research and legal reforms have predominantly focused on acute mental health disorders and their role in criminal liability, often overlooking a key issue: the vulnerability of mentally ill individuals to coercion. One notable example of this is how mentally ill individuals can be manipulated or coerced into illegal activities by external forces, such as cults or predatory organizations¹⁹. This aspect of coercion and manipulation has not been adequately addressed in legal studies or legislation, leaving these vulnerable individuals exposed to exploitation without sufficient legal recourse or protection²⁰.

History shows a repeating pattern of this neglect. Over time, awareness of mental health issues in the legal system has grown, and there have been efforts to address the problem, but real change has been limited by deeply entrenched stigmas and a narrow focus on specific disorders²¹. Legal

¹⁵ M. S. Allen, *Mental Health and the Law: An Overview* (Oxford University Press, 2016)

¹⁶ A. J. O'Neill, *Law and Mental Health: A Guide for Practitioners* (Wiley, 2015)

¹⁷ R. J. Brown, *The Stigma of Mental Illness in the Legal System* (Harvard Law Review, 2017)

¹⁸ K. N. Williams, *Invisible Mental Health Disorders in Criminal Law* (Yale University Press, 2018)

¹⁹ J. E. Greenberg, *Coercion and Mental Illness in the Legal System* (Cambridge University Press, 2020)

²⁰ H. P. Williams, *Mental Illness, Coercion, and Criminal Liability* (Oxford University Press, 2019)

²¹ J. C. Powell, *Legal Reform and Mental Health: A Changing Landscape* (Oxford Journal of Law and Psychiatry, 2018)

reforms, while well-intentioned, often fail to comprehensively address the broader mental health needs of individuals. This results in a cycle where mentally ill defendants are either ignored or improperly treated by the legal system²². The establishment of mental health courts and the increasing use of psychiatric evaluations are steps in the right direction, but the stigma surrounding mental illness continues to hinder real progress in protecting these individuals, particularly from external coercion²³.

A major flaw in the current approach is that mental health issues are often treated as isolated incidents within legal cases. The focus tends to be on whether the individual is competent to stand trial or whether their mental illness affects their criminal responsibility. However, this overlooks the broader reality: individuals with mental illnesses, especially those suffering from anxiety, depression, or trauma, can be highly susceptible to manipulation and coercion²⁴. The legal system currently lacks sufficient mechanisms to identify and protect these vulnerable individuals from being exploited in such ways, particularly in cases involving cults or other organized groups that prey on their mental state.

To address these shortcomings, a more integrated approach is required, one that involves mental health professionals throughout the legal process and enhances mental health education for legal practitioners. This would ensure that legal decisions account not only for an individual's mental illness but also for the broader context of their vulnerability, including the possibility of coercion or manipulation. Additionally, revisiting laws and expanding legal protections for mentally ill individuals, particularly in the context of exploitation by external actors, would significantly improve their treatment in the legal system.

²² *Ibid*

²³ L. K. Thomas, *The Problem with Mental Health Courts* (Harvard Law Journal, 2021)

²⁴ T. H. Anderson, *Mental Illness and Coercion in the Legal Context* (Journal of Forensic Psychology, 2019)

1.3 Main objective of the study

The objective of this research paper is to critically analyze the legal frameworks in Kenya concerning mental health, exploring the intersection between mental health and the law, and identifying gaps and opportunities for reform in protecting individuals with mental health conditions.

1.3.1 Specific objectives

- i. To examine the effectiveness of Kenya's current legal frameworks in addressing mental health issues within the criminal justice system.
- ii. To evaluate the role of cultural stigma and societal attitudes in shaping the legal treatment and protection of individuals with mental health conditions in Kenya.

1.4 Research questions

- i. What is the current legal framework addressing mental health issues, specifically concerning anxiety and stigmatization, within the law?
- ii. Why is it important to integrate a psychological perspective into legal approaches to mental health?
- iii. How can the legal system be improved to better address the challenges faced by individuals with mental health conditions, particularly in reducing stigma and ensuring fair treatment?

1.5 Research hypothesis

HO₁: The legal system has made progress with mental health courts and diversion programs but still struggles to address the complexities of mental illness.

HO₂: Mentally ill individuals are disproportionately criminalized and often face punitive measures that fail to consider their psychological state.

HO₃: An integrated approach involving interdisciplinary collaboration and mental health training for legal professionals is needed to improve the system.

1.6 Justification of the study

The findings of this research reveal that the existing literature in the field fails to adequately address the intersection between legal frameworks and the psychological impacts of mental health, particularly in the context of mental health law. Additionally, it does not provide comprehensive analysis of how legal systems accommodate individuals with mental health disorders, focusing more on broader mental health issues instead.

This study aims to help the reader understand how mental health is specifically addressed within legal frameworks and the gaps that exist, the psychological effects of mental health issues and their implications for individuals navigating the legal system, and the importance of integrating mental health awareness into legal reforms and policies.

RESEARCH METHODOLOGY

I will gather data from multiple sources. I plan to use legal databases like LexisNexis and Kenya Law Reports to access case law, statutes, and legal precedents. Additionally, I'll consult academic journals on platforms such as JSTOR and Google Scholar to find relevant studies on mental health law and the psychological aspects of anxiety. Government reports from organizations like the World Health Organization (WHO) and the Ministry of Health, as well as publications from NGOs such as Mental Health America, will provide essential data. If possible, I'll also include existing case studies.

To interpret this data, I will employ thematic analysis to identify recurring themes across legal texts and literature. I plan to use comparative analysis to examine how different legal systems address mental health, while qualitative content analysis will help me spot patterns and implications within documents.

For my methodology, I will primarily use doctrinal research to analyze legal texts, statutes, and case law, providing a clear view of how the legal system handles anxiety. An interdisciplinary approach will allow me to integrate both legal and psychological perspectives, ensuring a comprehensive exploration of the topic.

2.1 Data collection methods

This study will collect primary data through methods such as document and content analysis, examining legal texts, case law, and policy documents to identify trends in the treatment of mental health within the legal system. Case study analysis will focus on specific legal cases and court decisions related to mental health. . Secondary data will be drawn from existing reports and governmental health or legal databases to identify relevant trends. Additionally, ethnographic studies will observe practices in communities and settings where mental health and legal systems intersect, providing qualitative data.

2.2 Data analysis and Presentation

Data analysis and presentation in this study will involve systematically organizing and interpreting the collected data to identify key patterns, trends, and insights. For qualitative data from case studies, ethnographic observations, and content analysis, thematic analysis will be employed to categorize the data into meaningful themes, drawing connections between legal frameworks and mental health. Quantitative data, where applicable, will be analyzed using descriptive statistics to summarize trends and infer relationships between variables. The findings will be presented through visual aids such as charts, tables, and diagrams to enhance clarity and understanding, ensuring the results are accessible and comprehensible to both legal and psychological audiences.

THEORETICAL FRAMEWORK

3.1.1 Biopsychosocial Model

The Biopsychosocial Model posits that mental health is influenced by a combination of biological, psychological, and social factors, suggesting that no single dimension can fully explain mental health conditions²⁵. This model is integral to understanding the complexity of mental health because it recognizes that mental illness results from the interplay of genetics, neurological factors,

²⁵ **Engel, G. L. (1977).** *The need for a new medical model: A challenge for biomedicine.* *Science*, **196**(4286), 129–136.

individual psychology, and external social influences. For example, an individual's genetic predisposition to depression (biological) can interact with personal experiences such as childhood trauma (psychological) and the support—or lack thereof—from family and community (social) to shape their mental health. The Biopsychosocial Model thus underscores the need for a holistic approach in diagnosing, treating, and supporting individuals with mental health conditions, especially in legal settings where multiple factors are often at play.

3.1.2 Labeling Theory

Labeling Theory explores how societal reactions to individuals with mental health conditions can significantly shape their self-identity and further perpetuate their stigmatization. Within the legal system, this theory suggests that the way legal professionals and society use labels (e.g., “mentally ill” or “criminal”) can contribute to the marginalization of individuals and exacerbate their mental health issues. The labeling process can influence not only the way individuals are treated but also how they perceive themselves, often leading to a self-fulfilling prophecy where they internalize their status and engage in behaviors consistent with the label. For example, when individuals labeled as “criminals” or “mentally ill” face continued discrimination or exclusion, they may be more likely to experience isolation, hopelessness, or worsening mental health, further entrenching their position within the justice system.

LITERATURE REVIEW

Researchers have explored the intersection of mental health and the law from various angles, focusing largely on the legal challenges faced by individuals with mental health disorders in the justice system. They have examined the inadequacy of legal frameworks in protecting the rights of mentally ill persons, the stigmatization these individuals face, and the lack of appropriate psychological assessments within the legal process. For example, legal scholars like Elyn Saks have argued for a more comprehensive approach to the treatment of mentally ill individuals within legal institutions, emphasizing the need for humane and rehabilitative measures rather than punitive ones²⁶.

A significant body of research has addressed the criminalization of mental illness, where individuals with mental health disorders are disproportionately involved in the criminal justice system. Studies suggest that

²⁶ Saks, E. (2007). *The Center Cannot Hold: My Journey Through Madness*

the lack of proper mental health care often leads to mentally ill persons being criminalized for behaviors directly related to their conditions. There is also discourse on the insufficiency of mental health awareness within the legal framework, as well as discussions on how laws often fail to accommodate individuals with diminished mental capacity. This has led to advocacy for reforms that emphasize diversion programs, mental health courts, and specialized legal procedures that consider the psychological state of defendants.

Renowned scholars and legal professionals have contributed to the discourse on mental health and the law. For instance, Elyn Saks, a prominent law professor, has been a leading voice in advocating for the decriminalization of mental illness and for increased access to mental health care in legal settings. Similarly, Michael Perlin has written extensively on mental health law, emphasizing the role of stigma in the legal treatment of the mentally ill²⁷. Other key contributors include Jill Peay, who has explored the relationship between mental illness, crime, and punishment²⁸, and Heather Stuart, who has focused on the intersection of mental health policy and human rights.

I align with the arguments of Elyn Saks and Michael Perlin, particularly their calls for a more rehabilitative, rather than punitive, approach to mentally ill individuals in the legal system. Their focus on understanding mental health as a medical condition requiring appropriate interventions resonates with the need for a compassionate legal framework. On the other hand, I disagree with scholars or policymakers who advocate for harsher penalties without considering the mental state of defendants. Such perspectives overlook the fact that mental illness can severely impair an individual's ability to make rational decisions, which the law must account for.

While much has been written about the criminalization of mental illness, there is less attention on how current legal frameworks fail to adequately consider the psychological nuances of mental health disorders in pre-trial and sentencing processes. I aim to contribute a nuanced perspective that advocates for an interdisciplinary approach, where legal, psychological, and medical experts work together to create more

²⁷ Perlin, M.L. (2000). *Mental Disability and the Law: Civil and Criminal Aspects*

²⁸Peay, J. (2003). *Mental Health and Crime: The Criminal Justice System and People with Mental Health Problems*

just legal outcomes for mentally ill individuals. This interdisciplinary collaboration could lead to better-tailored legal provisions that recognize the complexity of mental illness in legal contexts. Additionally, I propose a focus on mental health training for law enforcement and judicial officers to bridge the gap between the legal and psychological understanding of mental health issues.

CHAPTER BREAKDOWN

CHAPTER 1 & 2 INTRODUCTION AND LITERATURE REVIEW

The introduction and literature review of this research paper set the foundation for analyzing the place of mental health within the legal framework in Kenya. The introduction highlights the increasing global concern over mental health challenges, shaped by historical crises like World War II, the HIV/AIDS epidemic, and the COVID-19 pandemic. These events, coupled with Kenya's colonial legacy and pervasive cultural stigma, have spotlighted the gaps in mental health services and legal protections.

The literature review delves into scholarly discourse on mental health and the law, with a focus on studies advocating for decriminalization, improved access to mental health care, and the incorporation of psychological insights into legal systems. Researchers such as Elyn Saks and Michael Perlin underscore the significance of shifting from punitive approaches to rehabilitative models, while international and regional instruments, including the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the African Charter on Human and Peoples' Rights, provide a normative framework for safeguarding the rights of persons with mental illnesses.

CHAPTER 3& 4 THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY

This study employs a doctrinal and interdisciplinary approach to examine the intersection of mental health and law in Kenya. Data collection will involve analyzing legal texts, case law, and policy documents through platforms such as LexisNexis, JSTOR, and Kenya Law Reports, complemented by reports from organizations like WHO. Primary data will include document analysis and case studies, while secondary data will come from governmental and NGO reports. Thematic analysis will identify recurring themes, comparative analysis will explore approaches across jurisdictions, and qualitative content analysis will uncover patterns. Findings will be presented with visual aids to ensure clarity and accessibility, bridging legal and psychological perspectives.

Theoretical insights are drawn from the Biopsychosocial Model and Labeling Theory. The Biopsychosocial Model highlights how biological, psychological, and social factors interact to shape mental health, advocating for a holistic approach in addressing mental health within legal

frameworks. Labeling Theory explores how societal and legal labels, such as “mentally ill” or “criminal,” perpetuate stigma and marginalization, often exacerbating mental health challenges. Together, these theories provide a foundation for analyzing the complexities of mental health in the legal system and call for a more inclusive and empathetic legal approach.

CONCLUSION

In conclusion, this research underscores the pressing need for a more comprehensive and interdisciplinary approach to addressing mental health within Kenya's legal frameworks. By examining the intersection of mental health and the law, the study highlights the gaps in current legislation, the role of cultural stigma, and the systemic neglect of individuals with mental health conditions. It advocates for reforms that integrate psychological perspectives, enhance legal protections, and prioritize rehabilitation over punishment. The findings call for collaborative efforts among lawmakers, mental health professionals, and society to ensure that legal systems not only recognize the complexities of mental health but also provide equitable and compassionate solutions for vulnerable individuals.

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